

# Congress of the United States

Washington, DC 20515

November 10, 2009

The Honorable Jo-Ellen Darcy  
Assistant Secretary of the Army (Civil Works)  
U.S. Department of the Army  
108 Army Pentagon  
Room 3E446  
Washington, D.C. 20310-0108

Dear Ms. Darcy:

We write to express our disappointment and frustration with your recent announcement that you intend to proceed with the Delaware River Main Channel Deepening project inside the State of Delaware without all applicable permits. We urge you to reconsider this decision.

On October 16, 2009, we wrote to you to highlight the language included in the Fiscal Year 2010 Energy and Water Appropriations Conference Report. To date, you have yet to respond to our letter, and we would like to, again, remind you of the language included in the report. That report states, "*None of the funds provided for this project are to be used in the State of Delaware during fiscal year 2010 for any construction activities. During fiscal year 2010, the Corps is urged to work with the State of Delaware on any State of Delaware permits necessary for project construction.*" The message could not be clearer. We are extremely disappointed that you have chosen to evade unambiguous Congressional intent by using FY09 funds to start the project and have forced this issue into litigation.

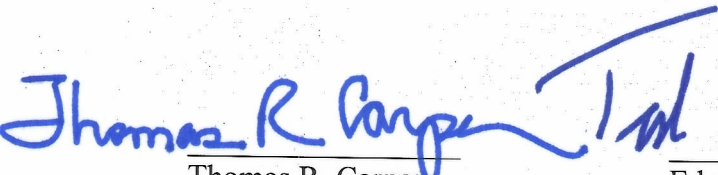
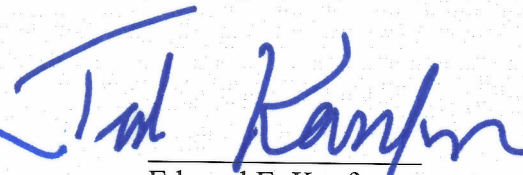
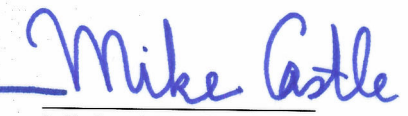
It is indisputable that the Clean Water Act seeks a collaborative relationship between federal, state and local governments, and that it protects the rights of Delaware and all states to exercise primary responsibility over the discharge of pollution in its navigable waters. For this reason, the Corps submitted applications for subaqueous lands and wetlands permits to the Delaware Department of Natural Resources and Environmental Control (DNREC) in 2001. A sharply-critical Government Accountability Office report about the Main Channel Deepening led the Corps to put the project on hold for a number of years and, ultimately, to redesign the project.

Through this process, the Corps has failed to take advantage of many opportunities to work with the State of Delaware to ensure compliance with environmental protection laws. The Corps' failure to address the permitting issues led to the Congressional limitation included in the FY10 Energy and Water Appropriations Conference Report.

The Delaware River Main Channel Deepening is a multi-state project, and the Corps must approach it as such. The Corps should not elevate the interests of one state over the interests of another. That the task before you may not be easy does not mean it cannot be achieved. The Corps' disregard of Delaware's rights serves only to elevate tensions and leave unanswered questions about the environmental impact of this project. We, once again, implore you to seek appropriate permits from the State of Delaware prior to project construction in our state.

In addition, we request a meeting with you in Washington, DC to discuss this matter before the end of November. Before that meeting occurs we ask that you provide us with a description of the action you have taken, and plan to take, to comply with the Conference Report.

Sincerely,

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| <u>Thomas R. Carper</u><br>United States Senator                                | <u>Edward E. Kaufman</u><br>United States Senator                                  | <u>Michael N. Castle</u><br>Member of Congress                                      |